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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,850	08/17/2006	Garry Chambers	0089500-003US0	3768
36257 7590 11/23/2009 DAVIS WRIGHT TREMAINE LLP - San Francisco 505 MONTGOMERY STREET SUITE 800 SAN FRANCISCO, CA 94111				
EXAMINER WAGGONER, TIMOTHY R				
ART UNIT 3651		PAPER NUMBER		
NOTIFICATION DATE 11/23/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/589,850

**Applicant(s)**

CHAMBERS ET AL.

**Examiner**

TIMOTHY R. WAGGONER

**Art Unit**

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-24 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments with respect to claims 1,21 and there dependent claims have been considered but are moot in view of the new ground(s) of rejection.

Amendments to claims 1 and 21 require new rejections.

Applicant's arguments filed with respect to claims 9-11 have been fully considered but they are not persuasive. Applicant argues that the mover taught by Wajda is not a ball shaped wheel. However the examiner contends that the wheel in figures 2A,2B and 2C is substantially ball shaped. For at least these foregoing reasons claims 9-11 stand rejected.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Testi USPN 2,288,979 in view of Garrod USPN 922,272.

.Testi discloses a dispenser comprising a main body and a textured dispensing cylinder, said cylinder being mounted in a channel to allow movement of the cylinder vertical movement relative to the plane of a stack of articles. Testi discloses dispensing

strips of metal which can be tested and held at one or more positions. The dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Though Testi does not disclose dispensing a test strip it is capable of dispensing such an item.

Testi does not disclose an immovable structure opposite the strip movement structure.

Garrod teaches a dispenser with an immovable structure opposite the strip movement structure.

It would be obvious to one skilled in the art to have an immovable structure opposite the strip movement structure because it prevents the strip being dispensed from moving away from the movement structure.

Claims 1-5,12-17 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alltop et al. USPN 3,308,989.in view of Anderson et al. USPN 6,082,581

Alltop discloses a dispenser comprising a main body and a thumb actuated pressed dispensing element. The dispensing element includes slots and protrusions for guiding the element and stopping its movement at first and second positions and a protrusion for contacting the strip. The dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Though Alltop does not disclose dispensing a test strip it is capable of dispensing such an item.

Alltop does not disclose an immovable structure opposite the strip movement structure.

Anderson teaches a dispenser with an immovable structure opposite the strip movement structure.

It would be obvious to one skilled in the art to have an immovable structure opposite the strip movement structure because it prevents the strip being dispensed from moving away from the movement structure.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Testi/Garrod in view of Wajda PGpub 2003/0121932.

Testi/Garrod discloses the dispenser as claimed in claims 1-8.

Testi/Garrod does not disclose a ball shaped dispenser.

Wajda teaches a ball shaped dispenser wheel.

It would be obvious to one skilled in the art to modify the dispenser of Testi to use a ball instead of a cylinder as it is an art recognized alternative.

#### ***Allowable Subject Matter***

Claim 18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY R. WAGGONER whose telephone number is (571)272-8204. The examiner can normally be reached on Mon-Thu 8am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy R Waggoner/  
Examiner, Art Unit 3651

TRW